

In re) Fair Hearing No. 10,105
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Appeal of)

The petitioner appeals the decision of the Department of Social Welfare denying him Supplemental Fuel benefits. The issue is whether the petitioner is over-income for the program.

1. The petitioner is a legally blind man who receives Social Security Disability benefits of \$806.60 per month. From that amount \$28.60 is deducted for Medicare payments. He also receives \$70.00 in Food Stamps. The petitioner rents a log cabin for \$625.00 per month and has a boarder who lives at the house with him. He heats with wood and requires seven to eight cords per year.

2. On October 16, 1990, the petitioner applied for Supplemental Fuel benefits. On October 18, 1990, he was notified in writing that his application had been denied because "your income is more than the Department allows for a household of your size". The Department concluded that the petitioner's unearned income of \$806.60 minus a \$75.00 disability deduction was still \$71.00 over the \$660.00 maximum for a household of one. He was therefore found to have failed

the "net income test", thus precluding the Department from considering his shelter expenses.

ORDER

The Department's decision is affirmed.

REASONS

Eligibility under the Supplemental Fuel benefits program is limited to households whose income does not exceed 150 percent of the federal Poverty Guideline for a household of the same size as calculated in tables adopted by the Department. W.A.M. § 2904.1. In calculating household income, the regulations require the use of income from any source, including the gross amount available from "disabled social security benefits including the Part B Medicare premium". W.A.M. § 2904.2, "Unearned income", (2)

A disabled person (as well as an elderly one and his or her spouse) is entitled to a \$75.00 deduction from his countable income before his eligibility is determined.¹ W.A.M. § 2904.3(3) That income is used to determine eligibility as follows:

Income Exclusions, Disregards, Deductions and Adjustments

Household eligibility will be established based on income computations utilizing the above exclusions, disregards and deductions. Households that are found eligible shall have an additional income adjustment applied prior to the benefit determination. Their income shall be adjusted as follows:

A housing cost income adjustment will be applied to all eligible fuel assistance households except roomer households. Any amount by which an eligible household's actual monthly home rental or ownership cost liability exceeds \$150 shall be deducted from the household income.

W.A.M. 9 2904.3

Under this regulation, the applicant's countable income is used to determine his initial eligibility (by comparing it with the maximum amounts). If he falls under the maximum he is found eligible and his income can then be further adjusted by deducting any excess shelter amount he might have before the amount of benefits is determined.

The petitioner reported \$806.60 in gross Social Security disability payments which includes the portion (\$28.60) which is deducted for Medicare payments. Under the regulations set out above, the gross amount before Medicare deductions must be used. The Department thereafter allowed the petitioner a \$75.00 deduction and used the \$731.00 figure to determine his eligibility. Under the Department's Fuel Tables, the Allowable Income Maximum for a one person household is \$660.00 per month. Procedures Manual 2905(A)(1). The petitioner was found ineligible at this point for failure to meet the "gross income" test.

The petitioner contends that he should have received an adjustment for his high housing costs before his eligibility was determined. That contention is not supported by the regulations which only take housing costs into account after

eligibility has been determined and only for the purpose of computing the amount of benefits.

As the Department's decision is in accord with a regulation whose validity has not been questioned, the Board must affirm that action. 3 V.S.A. § 3091(d). The petitioner has been advised by the Department that he may be eligible for the "emergency fuel assistance program" which has higher income maximums (\$780.00 for a one person household), if he should run out of fuel over the winter. He is encouraged to pursue his eligibility for that program.

FOOTNOTES

¹The petitioner does not argue that certain other exclusions, disregards, deductions and adjustments which are available to applicants (i.e. expense reimbursements, loans, day care, support and alimony and child support payment, etc.) are applicable here. See W.A.M. § 2904.3

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